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No. 1255

In the Supreme Court of the United States

OCTOBER TERM, 1968

EDWARD H. COOK, RICHARD WILLARD KAY, and PAUL PANCZKO,

Petitioners,

vs.

PEOPLE OF THE STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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No.

EDWARD H. COOK, RICHARD WILLARD KAY, and PAUL PANCZKO,

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PEOPLE OF THE STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

To: The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States

Petitioners, Edward H. Cook, Richard Willard Kay and Paul Panczko, pray that a Writ of Certiorari be issue to review the judgment of the Supreme Court of Florida entered on January 20, 1969, denying their Petition for a Writ of Prohibition, thereby affirming the order of the Court of Record, Broward County, Florida, denying petitioners' motions for acquittal on the grounds that the trial

of petitioners would violate their Constitutional rights (1) against twice being put into jeopardy and (2) to a speedy trial.

Judgment and Opinion of the Court below

In the order of the Supreme Court of Florida on January 20, 1969 (set out in Appendix A attached to this Petition) the court rendered no opinion and gave no reasons for its denial.

Jurisdiction of this court

1. The date of judgment to be reviewed was entered by the Supreme Court of Florida on January 20, 1969 (R. 61).[1]

This Petition is filed within 90 days of said order.

2. The jurisdiction of this court is invoked under Title 28, U.S. Code, Sec. 1257(3) and Rule 22(1) of the Rules of this court.

Questions presented for review

1. Were not the petitioners deprived of their right to a speedy trial under the Sixth Amendment of the Constitution as made applicable to the State of Florida by the Fourteenth Amendment when:

(a) The petitioners were first indicted for the crime of robbery on February 14, 1962, and their trial resulted in a mistrial because of a hung jury and,

(b) Where, upon a second trial, the trial judge entered an order on April 19, 1963 granting them a new trial from their conviction on the second trial, after which petitioners repeatedly requested in writing a

[1] "R" refers to the Transcript of Record as certified by the clerk of the Supreme Court of Florida and filed with this petition. All references are to the Record as submitted to this court, except, as noted, a reference to a Supplemental Record.

speedy trial in accordance with the appropriate Florida statutes and,

(c) The State appealed the grant of a new trial to the District Court of Appeals of Florida, Second District, which affirmed on February 12, 1964 the trial judge's order granting a new trial and,

(d) Where the petitioners moved on April 14, 1964 for a judgment of acquittal claiming denial of a speedy trial and

(e) Where the trial judge deferred ruling on the petitioners' motions for acquittal on 13 occasions from April 17, 1964 to March 10, 1967 at which time the trial court entered an order of acquittal and made a finding that jeopardy attached in dismissing the petitioners, and

(f) Where the State's Petition for Writ of Certiorari filed to the District Court of Appeals of the State of Florida, Fourth District was granted and an order entered quashing the order acquitting the petitioners and, which order was entered July 21, 1967, after which the Supreme Court of Florida denied petitioners' Petition for Writ of Certiorari on April 9, 1968, and

(g) Where petitioners filed a motion before the trial judge to dismiss the information on the grounds of double jeopardy and on the further ground that 23 terms of court (3 months each) elapsed without the cause coming on to trial, the trial court denying said motion on January 9, 1969?

2. Would not a re-trial of petitioner constitute double jeopardy in violation of the Fifth Amendment of the Constitution as made applicable to the states by the Fourteenth Amendment where at the conclusion of a second trial, the first trial having resulted in a hung jury, the court granted a new trial after which the court entered an order acquitting the petitioners and discharging them, ruling that "jeopardy has attached"?

Constitutional amendments and statutes involved

Fifth Amendment, United States Constitution

Sixth Amendment, United States Constitution

Fourteenth Amendment, United States Constitution

Chapter 915.01, Florida Statutes, 1963

(The pertinent provisions are set out in Appendix B of this Petition.)

Statement of facts

Petitioners were indicted on February 14, 1962 in the Court of Record for Broward County, Florida and charged with robbery. They went to trial with a jury which was unable to agree on a verdict and the cause was reset for a second trial (R. 2).

At the second trial, petitioners were convicted by the jury and sentenced to life imprisonment. A motion for a new trial was allowed on April 19, 1963 (R. 2), mainly on the ground of prosecutorial misconduct, in that the prosecutors commented upon petitioners' failure to testify in their own behalf (R. 18-22).

Thereafter, petitioners repeatedly filed motions for a speedy trial in accordance with Sec. 915.01 of the Florida Statutes. Such requests in writing were made on May 8, 1963, at the commencement of the July, 1963 term of court, at the commencement of the October, 1963 term of court and again at the commencement of the January, 1964 term of court (R. 2).

After the grant of a new trial on April 19, 1963, the State filed an appeal on May 13, 1963 from said order to the District Court of Appeals of Florida, Second District. Petitioners filed motions to dismiss the State's appeal on August 28, 1963, and again on October 17, 1963, both of which motions were denied. But on February 12, 1964, the District Court af Appeals affirmed the trial judge's order granting petitioners a new trial (R. 2). *State* v. *Cook*, Fla. App. 1964, 160 So. 2d 758.

Thereafter, on April 14, 1964, petitioners filed their verified motion for acquittal and amendment thereto, claiming denial of their right to a speedy trial as guaranteed by the State and Federal Constitutions, as well as by Sec. 915.01 and 915.02 of the Florida Statutes (R. 3).

On March 10, 1967, almost 3 years later, the trial judge entered an order acquitting the petitioners, discharging them from the crime for which they were charged and ruled that "jeopardy has attached" (R. 51).

At no time between April 14, 1964, the filing of the verified motion for acquittal, and the ruling by the court 3 years later on March 10, 1967, did the petitioners do anything to delay a ruling. The certified copy of the orders and entries that appear in the Court of Record for Broward County, Florida show that the court reset the hearings on the motion for acquittal on 14 occasions from April 14, 1964 until the order of acquittal entered on March 10, 1967 (Supp. R. pp. 1-2).

Thereafter, the State took Common Law Certiorari to the District Court of Appeals of Florida, Fourth District, and obtained an order on August 21, 1967 granting the Writ and quashing the order acquitting the petitioners (R. 52-54).

Petitioners sought review in the Supreme Court of Florida by way of a Petition for Writ of Certiorari, but that petition was denied on April 9, 1968, on the ground that the court was without jurisdiction to entertain the petition for the Writ (R. 55).

Petitioners then filed their motion to dismiss the information and for the entry of an order for acquittal before the trial court (a new trial judge, the former one having left the bench) (R. 2). Said motion was filed on January 7, 1969 (R 59) and was denied by the trial judge on the same date (R. 60). The grounds assigned for the renewed motion for acquittal were (1) that the petitioners had been acquitted by the trial judge and discharged and that therefore a retrial would constitute double jeopardy, and (2) on the further ground that since their motion for a new trial was granted on April 19, 1963, 23 terms of court (each term of 3 months' duration) passed until the then scheduled trial, set for January 13, 1969 (R. 56-59).

Petitioners filed their Suggestions for a Writ of Prohibition in the Supreme Court of Florida on January 13, 1969 (R. 1) and on January 20, 1969, the court denied the Writ of Prohibition, without opinion (R. 61).

Reasons relied on for allowance of the writ

1.

Petitioners' right to a speedy trial was violated

When petitioners were granted a new trial on April 19, 1963, upon their conviction on a second trial (the first trial having resulted in a hung jury, R. 1-2), the State effectively frustrated petitioners' right to that speedy trial by electing to appeal the trial court's grant of a new trial because of prosecutorial misconduct in commenting on petitioners' failure to take the stand (R. 21). Twice the petitioners moved to dismiss the State's appeal—on August 28, 1963 and on October 17, 1963 (R. 2)—and both times the reviewing court denied the motion. Thereafter, on February 12, 1964, the District Court of Appeals of Florida, Second District, affirmed the trial judge's order granting a new trial (R. 33) (*State* v. *Cook*, Fla. App. 1964, 160 So. 2d 758).

After the affirmance of the order granting a new trial, petitioners moved for a judgment of acquittal on April 14, 1964, claiming a denial of a speedy trial. The trial judge withheld ruling on the motion for acquittal from April 14, 1964 to March 10, 1967, without any fault on petitioners' part, at which time the court entered the order acquitting the petitioners and discharging them from the crime against which they had been informed and ruled further that "jeopardy has attached" (R. 51). The ruling was made 3 years after the motion was filed. No part of any of the delay is attributed to the petitioners. The court merely continued the matter on 14 separate occasions from April 14, 1964 to March 10, 1967 (See Supp. R., pp. 1-2).

The State was successful in obtaining an order of the District Court of Appeals of Florida, Fourth District, quashing the order acquitting the petitioners and the State, accordingly, has moved to retry the petitioners.

This court has jurisdiction to determine whether the State's procedure violated petitioners' rights under the Sixth Amendment of the Constitution through the due process clause of the Fourteenth Amendment. *Klopfer* v. *North Carolina*, 386 U.S. 213, 18 L. ed. 2d 1, 87 S. Ct. 988. See also *Gideon* v. *Wainwright*, 372 U.S. 335, 9 L. ed. 2d 799, 835 S. Ct. 792; *Pointer* v. *Texas*, 380 U.S. 400, 13 L. ed. 2d 923, 85, S. Ct. 1065.

In *Klopfer*, this court held that, " . . . the right to a speedy trial is as fundamental as any rights secured by the Sixth Amendment." (386 U.S. 223.)

The situation here is likened to the nolle prosse of indefinite limitation attempted by North Carolina in *Klopfer*:

> "The pendency of the indictment may subject him to public scorn and deprive him of employment and almost certainly will force curtailment of his speech, associations and the participation in unpopular causes. By indefinitely prolonging this oppression, as well as the 'anxiety and concern accompanying public accusation' *U.S.* v. *Ewell*, 383 U.S. 116, 120, 15 L. ed. 2d 627, 630, 86 S. Ct. 773 (1966) the criminal procedure condoned in this case by the Supreme Court of North Carolina clearly denies the petitioner the right to a speedy trial which we hold is guaranteed to him by the Sixth Amendment of the Constitution of the United States." *Klopfer* v. *North Carolina*, 386 U.S. 213, 222.

Clearly, the State had no substantial grounds to appeal the trial court's grant of a new trial, even though the procedural statutes of Florida permitted an appeal from a grant of a new trial. Sec. 915.01, Florida Statutes. When

Florida chose this method of denying petitioners their right to a speedy trial, such was without any fault on the part of the petitioners. And when the trial court delayed ruling for three years on petitioners' motion for acquittal, and then granted it, they ought not to suffer by reason of the Florida's reviewing court reversing such order.

"The right to a speedy trial guaranteed by the Sixth Amendment means a trial without delays manufactured by the ministers of justice." Black, Constitutional Law, Sec. 266 quoted in *United States* v. *Provoo,* 17 FRD 183, 197 (D.C. D. Md. 1955), aff'd 350 U.S. 857, 100 L. ed. 761, 76 S. Ct. 101 (1955).

The Sixth Amendment was intended not only to prevent delays manufactured by the prosecutor, but to require "the judicial tribunal to proceed with reasonable dispatch in the trial of criminal prosecutions." *Shepherd* v. *United States,* 163 F. 2d 974, 976 (8 Cir. 1947).

An almost identical situation obtained in *Marshall* v. *United States,* 337 F.2d 419 (DC Cir. 1964). Defendant's first trial for rape resulted in a hung jury and his conviction on a second trial was vacated. His third trial resulted in a conviction and defendant was sentenced on July 26, 1963 for the crime alleged to have been committed on September 23, 1959, 43 months elapsing from date of indictment to date of final conviction. The delays between the vacature of the judgment of conviction of the second trial and his conviction on the third trial were attributed to the actions of the trial judge in continuing the cause to suit his calendar.

> "Since the case was 31 months old in June, 1962, the court should then have arranged its calendar so as to avoid having to postpone the trial to October." (337 F. 2d 122)

There were other delays which the Court of Appeals declared the trial court could have avoided.

> "By this test, Marshall did not have a speedy trial. Though the delay was not purposeful in any meaningful sense, much of it was arbitrary, and in the aggregate it was oppressive and vexatious." (337 F.2d 122)

The court, accordingly, ordered the conviction vacated and the indictment dismissed.

The excessive delays in the case at bar, none of which is attributable to petitioners, are as much a bar to prosecution here as in *United States* v. *Provoo,* 17 FRD 183 (DC Md 1955).

Provoo was tried for treason during World War II. The government chose a wrong forum in which to indict the defendant in New York. He should have been tried in Maryland. The delay in finally proceeding in Maryland was in large part "due to the deliberate choice of the government, exercised for a supposed advantage." (17 F.R.D. 195). The court dismissed the indictment for want of a speedy trial, the ruling being affirmed in this Court, 350 U.S. 857, 100 L.ed 761, 76 S.Ct. 101 (1955).

In *United States* v. *Lustman,* 258 F. 2d 475 (2 Cir., 1958), the court stated that although a showing of prejudice is required when asserting the right to a speedy trial under the Sixth Amendment,

> " . . . we assume that the unexcused delay of approximately four years was an undue delay within the meaning of the Sixth Amendment even though appellant has not shown that it prejudiced him in the presentation of his defense." 258 F. 2d 478.

The decision in *Lustman* turned on whether the appellant there could complain of the government's delays when he failed to demand an early trial. In the case at bar,

petitioners again and again demanded trial and were at no time guilty of laches.

Also, there is no "touchstone of time which sets a fixed maximum period that automatically requires application of the Sixth Amendment and dismissal of the indictment . . . the longer the time between arrest and trial, the heavier the burden of the Government in arguing that the right to a speedy trial has not been abridged. Other factors to be considered are the reasons for the delay, the diligence vel non of prosecutor, court and defense counsel, and the likelihood, or at least reasonable possibility, that defendant has been prejudiced by the delay." *Hedgepeth* v. *United States,* 364 F.2d 684, 687 (D.C. Cir., 1966).

Florida's appeal from the order granting the new trial was deliberately capricious; and the court's delay of 3 years in granting the motion for acquittal, certainly prejudiced the petitioners.

Just as the court may not suspend indefinitely the pronouncement of sentence after conviction, or suspend indefinitely execution of the judgment after sentence is pronounced, the court may not unreasonably and without any fault on petitioners' part delay for 3 years ruling on their motion for acquittal. In *People, ex rel. Boenert* v. *Barret,* 202 Ill. 287, 67 NE 23 (1903), defendant was found guilty of manslaughter on April 12, 1900 and thereupon filed his motion for a new trial. The court delayed ruling for 2½ years, until October 31, 1902, when it denied the motion. The Supreme Court of Illinois reversed the conviction and dismissed the defendant because of the undue length of time the trial judge held the sword of Damocles over defendant's head. The reasoning adopted by the Illinois Supreme Court is apt here:

> "There can be no doubt that a court has the right, in a criminal cause, to delay pronouncing judgment for a

> reasonable time, for the purpose of hearing and determining motions for a new trial or in arrest of judgment, or to give the defendant time to perfect an appeal or writ of error, or for other proper causes; but to suspend indefinitely the pronouncing of the sentence after conviction, or to suspend indefinitely the execution of the judgment after sentence pronounced, is not within the power of the court. To allow such a power would place the criminal at the caprice of the judge. If the judge can delay the sentence one year, he could delay it for fifteen years, or any length of time." (67 N.E. 24)
>
> * * * *
>
> "An execution of such power in this age would be no less revolting to our sense of justice than was the exercise of such power in the reign of James I, when he sent Sir Walter Raleigh to the block fifteen years after his conviction." (67 N.E. 25)

This right to a speedy trial is not a "mere ceremonial to be neglected at will in the interests of a crowded calendar or other expediencies. They are basic rights. They bulk large in the totality of the procedural rights guaranteed to a person accused of a crime." (Mr. Justice Warren, dissenting along with Justices Black Douglas and Brennan in *Pollard* v. *United States,* 352 US 354, 364, 1 L ed 2d 393, 77 S Ct 481 (1957)).

Petitioners pray the grant of the Writ of Certiorari to review the extent to which the power of the State or that of a court may delay a defendant from having a speedy trial, the defendants having done nothing to delay such trial.

2.

A retrial of petitioners would violate the constitutional provision that a defendant may not twice be put in jeopardy.

Petitioners had been tried twice. The State was unable to obtain a valid conviction in either trial.[2] Subsequently, the trial court entered an order finding that jeopardy had attached, and acquitted the petitioners. (R. 51). The State appealed the order. The reviewing court quashed "the order acquitting the defendants." (R. 53). In the trial court, petitioners filed a motion alleging that a retrial, subsequent to the order of acquittal, would violate their constitutional right not to be placed twice in jeopardy. (R. 57-58). This motion was denied. (R. 60).

In *Fong Foo* v. *United States,* 369 U.S. 141, 7 L.ed. 2d 629, 82 S.Ct. 671 (1962) this court held that a retrial, subsequent to final order of acquittal, violated a defendant's constitutional protection against twice being placed in jeopardy. The trial judge had entered an order acquitting defendant because of supposed improper conduct upon the part prosecutor. (As here). The government, by mandamus, obtained an order vacating the order of acquittal entered by the district court. This court stated, 369 U.S. 142:

> "The petitioners were tried under a valid indictment in a federal court which had jurisdiction over them and over the subject matter. The trial did not terminate prior to the entry of judgment, as in *Gori* v. *United States,* 367 U.S. 364, 6 L.ed 2d 901, 81 S.Ct. 1523. It terminated with the entry of a final judgment of acquittal as to each petitioner. The Court of Appeals thought, not without reason, that the acquittal was based upon an egregiously erroneous foundation.

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[2] The first trial resulted in a hung jury. (R. 1-2). After conviction on the second trial, petitioners were granted a new trial, because of the prosecutor's misconduct. (R. 2).

> *Nevertheless, '(t)he verdict of acquittal was final, and could not be reviewed* . . . without putting (the petitioners) twice in jeopardy, and thereby violating the Constitution.' *United States* v. *Ball,* 163 U.S. 662, 671, 41 L.ed 300, 303, 16 S.Ct. 1192." (Emphasis added.)

The court's decision in *Fong Foo,* controls.

In the instant case, the trial judge had presided over two trials against petitioners. He determined that because of prosecutorial misconduct, to-wit: improper argument to the jury, and then a frivolous appeal from his order granting a new trial, the appropriate order was a judgment of acquittal. A retrial of petitioners after such final order of acquittal would violate their right against twice being put in jeopardy under the Fifth Amendment to the Constitution of the United States.

Nor can it be contended that the double jeopardy provisions do not control because defendant had not been punished. The prohibition of the Double Jeopardy Clause is not merely against twice being punished; but against twice being put in jeopardy. *Downum* v. *United States,* 372 U.S. 734, 10 L.ed 2d 100, 83 S.Ct. 1033 (1963), *United States* v. *Ball,* 163 U.S. 662, 41 L.ed 300, 16 S.Ct. 1192 (1896). Petitioners have been tried twice before a jury. They have clearly been in jeopardy.

The Double Jeopardy provision of the Fifth Amendment applies, through the Fourteenth Amendment, to criminal proceedings in state courts. The refusal of the court in *Palko* v. *Connecticut,* 302 U.S. 319, 82 L.ed 288, 58 S.Ct. 149 (1937), to apply the double jeopardy provisions to the states, was based upon its prior ruling in *Twining* v. *New Jersey,* 211 U.S. 78, 53 L.ed 97, 29 S.Ct. 14 (1908), which held that the self-incrimination provisions of the Fifth Amendment did not apply to the states. *Twining* has

been reversed in *Malloy* v. *Hogan,* 378 U.S. 1, 12 L.ed 653, 84 S.Ct. 1489 (1964). Moreover, this Court, in *Duncan* v. *Louisiana,* 391 U.S. 145, 20 L.ed 2d 491, 88 S.Ct. 1444 (1968), has rejected the *Palko* rationale in determining whether the first Eight Amendments to the United States Constitution control prosecutions in state courts. Your Honors stated:

> "In one sense recent cases applying provisions of the first eight amendments to the States represent a new approach to the "incorporation" debate. Earlier the Court can be seen having asked, when inquiring into whether some particular procedural safeguard was required of a State, if a civilized system could be imagined that would not accord the particular protection. . . . Of immediate relevance for this case are the Court's holdings that the States must comply with certain provisions of the Sixth Amendment, specifically that the States may not refuse a speedy trial, confrontation of witnesses, and the assistance, at state expense if necessary, of counsel. See cases cited in nn. 8-12, supra. Of each of these determinations that a constitutional provision originally written to bind the Federal Government should bind the States as well it might be said that the limitation in question is not necessarily fundamental to fairness in every criminal system that might be imagined but is fundamental in the context of the criminal processes maintained by the American States." 20 L.ed 491, at 496 in footnote No. 14.

Last term, the court granted a petition of certiorari, in *Benton* v. *Maryland,* 392 U.S. 925 specifically to determine whether the Fifth Amendment provisions against double jeopardy applied to the states. The court heard argument on December 12, 1968. On December 16, 1968, the court set the matter down for re-argument, requesting the parties to respond to the following issue, not specified in the original writ, to-wit: "Does the 'concurrent sentence doctrine,' enunciated in *Hirabayashi* v.

United States, 320 U.S. 81, 105, and subsequent cases, have continuing validity in light of such decisions as *Ginsberg* v. *New York,* 390 U.S. 629, 633, n. 2, *Peyton* v. *Rowe,* 391 U.S. 54, *Carafas* v. *LaVallee,* 391 U.S. 234, 237-238, and *Sibron* v. *New York,* 392 U.S. 40, 50-58?" 89 S.Ct. 481. (The case was re-argued on March 24, 1969.) This question only becomes relevant if the Double Jeopardy provisions applies to the states.

Recent state and federal reviewing courts, upon considering *Palko* in the light of recent Supreme Court consideration as to whether the first Eight Amendments apply to the states, have held that the Double Jeopardy provisions apply. The case was re-argued on March 24, 1969. In *United States* v. *Wilkins* (1965), 348 F.2d 844, 853-854, the court stated:

> "It would be indeed difficult to maintain that the basic core of the double jeopardy guarantee is not as fundamental as some of (the) guarantees (already incorporated into the due process clause of the Fourteenth Amendment) and that therefore it should not be included in the universe of those guarantees of the Bill of Rights that are absorbed by the Fourteenth Amendment and made applicable to the states."

In *People* v. *Eggleston* (Cal. App. 1967), 63 Cal. Rptr., 104, the court stated:

> "The premise that the Fourteenth Amendment makes the Fifth wholly applicable to the states has not been adopted by the United States Supreme Court * * * There are, however, indications in later decisions of that court of a trend to such a rule * * * We shall assume * * * that the double jeopardy proscription of the Fifth Amendment is fully applicable to the states."

In *State* v. *Fletcher* (Ohio, 1968), 240 N.E. 2d 905, 910, the court stated:

> "That the Supreme Court has not yet specifically incorporated the double jeopardy clause of the Fifth Amendment into the Fourteenth demonstrates no deliberate judicial intention to relegate that fundamental

> safeguard to some inferior status; rather, protection against double jeopardy has been so fiercely guarded as a basic element of our heritage of freedom and its history so closely parallels that of other basic values already embedded in our conception of due process, that this court is led ineluctably to the conclusion that its current omission from the Supreme Court's ever-lengthening recital of protections within our expending notions of fundamental fairness, is but temporary and indicates only that the judicial process of redefining constitutional philosophy, though in progress, is, as yet, incomplete."

Here defendants have been tried by two juries. The prosecution having made defendants twice walk the plank has not been able to obtain a valid conviction. The trial court has found that jeopardy has attached, and granted defendants an order of acquittal. (R. 51) Permitting the State to force petitioners to defend a third time, for the same offense, violates the provisions of the United States Constitution against double jeopardy.

CONCLUSION

We respectfully submit the matters here presented are of general import to the supervision of criminal trials throughout the States.

We pray that your Honors will consider this a fit case to warrant this court's attention and granting of the Writ.

Respectfully submitted,

JULIUS LUCIUS ECHELES
FREDERICK F. COHN
Attorneys for Petitioners.

JOSEPH A. VARON
Of Counsel

APPENDIX A

In the Supreme Court of Florida
January Term, A.D. 1969
Monday, January 20, 1969

State of Florida, on the relation of Edward H. Cook, Relators,	)	
vs.	)	Case No. 38,202
Robert W. Tyson, Jr. etc., Respondent.	)	

Upon consideration of the suggestion for writ of prohibition, it is ordered by the Court that the said suggestion be and the same is hereby denied.

A True Copy

Test:

Sid J. White

Clerk Supreme Court.

By: Chief Deputy Clerk.

cc: Honorable John Ward Henderson
Honorable Joseph A. Varon
Honorable Robert W. Tyson, Jr.
Honorable Reeves Bowen

APPENDIX B

The Fifth Amendment to the Constitution states in pertinent part:

> ". . . nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb . . ."

The Sixth Amendment to the Constitution states in pertinent part:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . ."

The Fourtenth Amendment to the Constitution states in pertinent part:

> ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law . . ."

Chapter 915.01, Florida Statutes, provides:

> "(2) When a person has been arrested and released on bond, and thereafter for three successive terms of court, files a written demand for trial (serving a copy on the prosecuting attorney) and he is not brought to trial at or before the third full term after the date he is first committed, he shall be forever discharged from the crime; provided, however, the attendance of the witnesses is not prevented by himself, and he has filed no pleading seeking a continuance."